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IN THE

Supreme Court of the United States

October Term, 1956

No. 753

HUGH H. BRIDGFORD,

Petitioner,

vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy for the Estate of The Bridgford Company, a Corporation, Bankrupt,

Respondent.

Petition for Writ of Certiorari to United States Court of Appeals for the Ninth Circuit.

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Petition for Writ of Certiorari to United States Court of Appeals for the Ninth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Ninth Circuit entered October 3, 1956, reversing the judgment of the United States District Court for the Southern District of California, Southern Division, entered August 20, 1954 and May 23, 1955.

Opinions Below.

The Memorandum Opinion of the District Court Modifying Order of Referee filed July 14, 1954 is not reported. [R. 136; Appendix, p. 1.] The opinion of the Court of Appeals for the Ninth Circuit filed October 3, 1956, (Appendix, p. 4) is reported at 237 F. 2d 182.

Grounds on Which Jurisdiction Is Invoked.

The date of the Judgment sought to be reviewed and the date of its entry are October 3, 1956. (Appendix, p. 14.)

The date of the Order Denying Petition for Rehearing is November 13, 1956. (Appendix, p. 15.)

No order granting an extension of time within which to petition for certiorari was made.

The statutory provision believed to confer on this court jurisdiction to review the judgment in question by writ of certiorari is the United States Code, Title 28, Section 1254(1).

Questions Presented for Review.

1.

The fundamental question presented in this petition is whether the donee of Certificates of Indebtedness of a Debtor-in-Possession which were given priority in payment over existing obligations of the debtor, acquired by the donor, a fiduciary, for full consideration, must be precluded from participation in the distribution of the assets of the bankrupt, merely because the donee was also a fiduciary of the bankrupt.

II.

A question in this petition is also whether fundamental constitutional rights and privileges under the Fifth Amendment of the Constitution of the United States of both the donor and donee in respect to said Certificates of Indebtedness have been abridged by the decision of the United States Court of Appeals for the Ninth Circuit.

Statement of the Case.

The material facts in chronological order are as follows:

1. On April 25, 1947, a petition under Chapter XI of the Bankruptcy Act was filed by The Bridgford Company. [R. 3.]

2. On said date of April 25, 1947, and prior thereto, petitioner was the president, director and principal shareholder of The Bridgford Company. [R. 177.] At no time after the filing of said petition did petitioner as such president, director or principal shareholder have any connection with or control of the business affairs of The Bridgford Company.

3. On April 25, 1947, the District Court, through one of its Referees in Bankruptcy, assumed control of the assets of The Bridgford Company, appointed M. E. Wagenheim as General Manager of the company, and, through said General Manager, thereafter controlled and conducted the business and affairs of said company continuously until November 6, 1947. [R. 16.]

On February 26, 1948, the said Referee in Bankruptcy by his order approved the Plan of Arrangement for the company and directed that the company "shall take over its business and assets and operate such business without Court control." [R. 26.] At that time one R. H. Hadley was the Chairman of the Board of Directors and principal

shareholder of the company and he operated and controlled the company, free of court control, continuously from February 26, 1948 until November 24, 1948. [R. 197.]

6. On November 28, 1947 and again on January 23, 1948, the said Referee in Bankruptcy signed orders authorizing the issuance by The Bridgford Company of not to exceed 46 Certificates of Indebtedness for $5,000.00 each. [R. 19 and 23.] All of these certificates were issued to Mr. R. H. Hadley for cash in the face amount of the certificates loaned by him to the company. [R. 169-170.] At the time both of said orders were made Mr. Hadley was General Manager of the company by appointment of the District Court and was operating the company's affairs under the Court's control. [R. 187.] These certificates, pursuant to the terms thereof, were given priority. [R. 22.] All of these certificates were subsequently repaid by the company except certificates Nos. 35 to 40, both inclusive, which are the basis of petitioner's claim and are the subject matter of the appeal. At this time there is unpaid the face amount of said certificates aggregating $30,000.00 plus interest against which respondent has an offset of approximately $10,996.40.

7. During the period that Mr. Hadley was operating the company free of court control, to-wit from February 26, 1948 to November 24, 1948, the company incurred debts which respondent asserts should be prior to petitioner's claim on said certificates of indebtedness. [R. 197.]

8. On November 24, 1948, on petition of the company, the court resumed control of the company, its business and assets, and appointed petitioner as General Manager, later adding two Co-General Managers. [R. 177-178.] The Court retained control of the company

through said general managers continuously thereafter, until the adjudication in bankruptcy on November 8, 1949. [R. 65.]

9. On November 4, 1949, said certificates Nos. 35 to 40, both inclusive, were transferred and assigned by Mr. Hadley to petitioner as a gift. [R. 140 and 166.]

10. On February 13, 1953, petitioner filed herein his claim on said certificates Nos. 35 to 40, both inclusive, in the amount of their face value, *i.e.,* $30,000.00 plus interest. [R. 96.]

11. On November 13, 1953, the Referee in Bankruptcy allowed said claim of petitioner but subordinated it to the payment of all other claims. [R. 118.]

12. By orders of District Judge Ben Harrison on August 20, 1954 and May 23, 1955, said order of the Referee was modified and petitioner's claim was held to be prior over general creditors' claims and subordinate to expenses of administration and court costs. [R. 138 and 148.]

13. On October 3, 1956, the Court of Appeals for the Ninth Circuit reversed the judgment of the District Court, and precluded any recovery by petitioner because he obtained the certificates by gift, and on November 13, 1956 denied a petition for rehearing.

The United States District Court for the Southern District of California, Southern Division, had jurisdiction by virtue of the provisions of Section 2-a, Subdivision 1 of the Bankruptcy Act. (11 U. S. C., Sec. 11(a).)

The United States Court of Appeals for the Ninth Circuit had jurisdiction of the appeal by virtue of Section 25-a of the Bankruptcy Act. (11 U. S. C., Sec. 47(a).)

REASONS RELIED UPON FOR ALLOWANCE OF WRIT OF CERTIORARI.

I.

The Court of Appeals for the Ninth Circuit Has so Far Departed From the Accepted and Usual Course of Judicial Proceedings, as to Call for an Exercise of This Court's Power of Supervision.

The certificates in question under court order and for full consideration were issued to Hadley, who was the Court's appointed manager. They were retained by Hadley to November 4, 1949 on which date he made a gift of them to this petitioner. On that date petitioner herein was a court appointed manager and Hadley was Chairman of the Board, a Director and the principal shareholder of the Company. Hadley is not complaining. The Court of Appeals for the Ninth Circuit reversed the judgment of the District Court, granting priority payment according to the tenure of the certificates, holding that petitioner herein is precluded from collecting more than he paid for a claim against an insolvent to which he owed a fiduciary duty. We submit in so doing, the Court of Appeals for the Ninth Circuit so far departed from the usual course of judicial proceedings, as to call for an exercise of this court's power of supervision. If petitioner had been "trafficking" in such certificates by buying the same at a discount, there would be reason to support the decision of the Court of Appeals for the Ninth Circuit. If these certificates of Indebtedness had been given to influence petitioner in his fiduciary capacity to take some wrongful act there would also be reason for

such decision. Such, however, was not the case. There was no "trafficking." Trafficking denotes a barter or sale transaction. Webster's New Twentieth Century Dictionary (1954) among other definitions defines traffic: to trade; to pass goods and commodities from one person to another for an equivalent in goods or money; to barter; to buy and sell wares; to carry on commerce. This, however, was a gift. A gift is the antithesis of trafficking. Let us suppose that instead of petitioner and Hadley a husband and wife were involved and that the husband occupied Hadley's position and his wife occupied petitioner's position. Could it be said that the wife could not recover, simply because the husband had given her the certificates? The decision of the Ninth Circuit would, however, preclude such recovery. Constitutionally, and among the inalienable rights of man, zealously guarded by this Court, is the right of acquiring, possessing and protecting property which includes the right to dispose of property. Under the police power, of course, that right can be curtailed within reasonable limits when public good requires such curtailment.

It would seem that the decision of the Ninth Circuit is an unreasonable encroachment on the right of a man to give his property to those whom he desires to be the recipients of his bounty, and there is no justification under the facts of this case to justify the frustration of the rights of both the donor and the donee.

The Court of Appeals for the Ninth Circuit made much of the fact that Bridgford, petitioner herein, pur-

suant to the order of the Referee made payment to himself on said Certificates of Indebtedness while he was a co-manager. [R. 63.] This should be immaterial. He was later ordered to repay these monies and is in compliance with said order as thereafter amended. [R. 143.] As Judge Harrison, the District Judge States [R. 137; Appendix, pp. 1 and 2]:

> "Any possible misuse of his position by virtue of the fact that he obtained payment for these Certificates with knowledge that the Debtor was about to be adjudicated a bankrupt, was erased by order of the Referee requiring him to pay back the money so obtained."

The Referee did not feel that the payment of November 7, 1949, precluded Mr. Bridgford from asserting a claim of priority at the proper time. The Referee in his Order of January 16, 1953 [R. 95], stated in part:

> "It is further ordered that the Findings of Fact and Conclusions of Law and Order heretofore made herein, dated November 17, 1952, are and were made without prejudice to the right of the said Hugh H. Bridgford to claim and assert a priority status and a preference for said claims on said Certificates of Indebtedness."

In this proceeding Bridgford, petitioner herein, is seeking only to obtain what Hadley would have been entitled to receive. The creditors should have no right to complain. On the other hand, the decision of the Court of Appeals for the Ninth Circuit produces a gift or a windfall to the general creditors and in reality takes property

without due process of law. As Judge Harrison, the District Judge, said:

> "Petitioner has succeeded to the position of his assignor (Hadley) and the fact that he himself gave no consideration for these Certificates is not material. Petitioner himself did nothing to detract from the position given to him by his assignor. His duty as a court appointed officer is not violated when he seeks to realize on rights to which he is entitled by valid order of that court." [R. 137; Appendix, p. 1.]

Judge Harrison's conclusion of law covers this point as follows:

> "That Petitioner although occupying the position of a fiduciary as to the Bankrupt when he acquired these Certificates, did nothing to detract from the position given to him by H. H. Hadley, his assignor, also a fiduciary as to the Bankrupt, and therefore, Petitioner's fiduciary position, as aforesaid, does not in any way detract from the rights he might have otherwise had with reference to said Certificates if he had not occupied said fiduciary position." [R. 141.]

As further stated by Judge Harrison:

> "Under these circumstances the position to be afforded his claim was to be determined solely by the position which the court gave to the Certificates at the time they were issued. The position so given these Certificates, was to be one of priority over existing claims and the integrity of the Certificates and thus this position is to be maintained." [R. 137; Appendix, p. 2.]

II.

The Court of Appeals for the Ninth Circuit Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be Settled by This Court.

The Court of Appeals in this case has decided that the holder of Certificates issued by debtor corporation, later a bankrupt, is precluded from recovering on such Certificates where he has acquired those Certificates by gift from another and both the donor and the donee occupied fiduciary relation to the corporation. This is an important question pertaining to reorganization proceedings under the Federal Bankruptcy Law, bankruptcies, and general receivership proceedings involving insolvency. So far as we are able to ascertain this Court has not passed upon this question. We believe the matter has been touched upon, and then indirectly, in one court, viz., in the case cited by the Court of Appeals for the Ninth Circuit in its decision *Bramblet v. Commonwealth Land & Lumber Co.*, 26 Ky. Law. Rep. 1176, 1179, 83 S. W. 599, 602, mod. on other grounds, 27 Ky. Law. Rep. 156, 84 S. W. 545 (1904). However, whatever was said on the point in that case was dictum, as examination of that case shows that there was a trafficking and not a gift situation. If the decision of the Court of Appeals for the Ninth Circuit is allowed to stand, it is to be expected that in case after case, where gifts are involved, claims filed in bankruptcy, receivership and insolvency proceedings will be challenged.

Wherefore, your petitioner prays that a writ of certiorari may issue under the seal of this Court, directed to the United States Court of Appeals for the Ninth Circuit, to the end that this case may be reviewed and determined by this Court as provided by law, and that the judgment of the said court may be reversed by this Honorable Court, and the judgment of the United States District Court affirmed, and that this petitioner may have such other and further relief as may seem meet and proper.

Respectfully submitted,

KYLE Z. GRAINGER,

Attorney for Petitioner.

Certificate of Counsel.

I, KYLE Z. GRAINGER, a member of the bar of this Court, hereby certify that I believe the foregoing Petition for Writ of Certiorari is well founded and meritorious, and is not interposed for the purpose of delay.

KYLE Z. GRAINGER.